

regulations, and/or the counterpart Wyoming program provisions (Administrative Record No. WY-29-01). By letter dated January 19, 1995, Wyoming responded to OSM's request (Administrative Record No. WY-29-02).

Wyoming stated that three underground coal mines were active in Wyoming after October 24, 1992. Wyoming indicated that existing State program provision at Wyoming Statutes 35-11-102 (policy and purpose); 35-11-406 (permit applications); 35-11-416 (surface owner protection); and 35-11-428 (in situ mining permit applications); and Wyoming Coal Rules and Regulations at chapter VI, section 2 (general environmental performance standards); chapter VII, sections 1 through 4 (underground mining permit applications, environmental protection performance standards, public notice, and surface owner protection); and chapter XVIII, section 3 (in situ mining permit applications) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations.

Wyoming explained that it will enforce these State program provisions in accordance with the enforcement provisions that were in effect October 24, 1992. Wyoming has investigated one citizen complaint alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. This complaint concerned subsidence damage to a reclaimed reservoir. This is a unique situation in that the alleged damage occurred within the permit area of an adjacent surface coal mine. The two mine operators have mutually agreed upon corrective measures and have not requested the State of Wyoming to intervene.

## II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Alaska, Montana, North Dakota, and Wyoming to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

### A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be

considered in OSM's final decision or included in the Administrative Record.

### B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t. on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Alaska, Montana, North Dakota, and Wyoming should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

**Russell F. Price,**

*Acting Assistant Director, Western Support Center.*

[FR Doc. 95-8467 Filed 4-5-95; 8:45 am]

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## 30 CFR Parts 904, 918, 936, and 943

### Arkansas, Louisiana, Oklahoma, and Texas Regulatory Programs

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Announcement of public comment period and opportunity for public hearing.

**SUMMARY:** OSM is requesting public comment that would be considered in deciding how to implement in Arkansas, Louisiana, Oklahoma, and Texas underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations, require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Arkansas, Louisiana, Oklahoma, and Texas regulatory programs (hereinafter referred to as the "States programs") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Arkansas, Louisiana, Oklahoma, and Texas and consideration of public comments, OSM will decide whether initial enforcement in Arkansas, Louisiana, Oklahoma, and Texas will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

**DATES:** Written comments must be received by 4 p.m., c.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Arkansas, Louisiana, Oklahoma, and Texas. Requests to speak at the hearing must be received by 4 p.m., c.d.t. on April 21, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand-delivered to James H. Moncrief, Director, Tulsa Field Office at the address listed below.

Copies of the applicable parts of the State programs, SMCRA, the implementing Federal regulations, information provided by Arkansas, Louisiana, Oklahoma, and Texas concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, OK 74135-6547, Telephone: (918) 581-5430.

**FOR FURTHER INFORMATION CONTACT:** James H. Moncrief, Director, Tulsa Field Office, Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. The Energy Policy Act*

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

*B. The Federal Regulations Implementing the Energy Policy Act*

On March 31, 1995, OSM promulgated regulations at 30 CFR part 817 to implement the performance standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722-16751).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. \* \* \* The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to

the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(C)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

#### *C. Enforcement in Arkansas*

By letter to Arkansas dated December 15, 1994, OSM requested information from Arkansas that would help OSM decide which approach to take in Arkansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Arkansas program provisions (Administrative Record No. AR-542). By letter dated January 30, 1995, Arkansas responded to OSM's request (Administrative Record No. AR-453).

Arkansas stated that one underground coal mine was active in Arkansas after October 24, 1992. Arkansas indicated that its existing State law and its regulations at Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) Sections 779.17, 780.21(e),

783.17, 784.14, 784.20(c) 816.54, and 816.124-U(b) and (c) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Arkansas did not indicate when the existing State counterpart provisions went into effect. However, Arkansas did indicate that it had not received any citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992.

#### *D. Enforcement in Louisiana*

By letter to Louisiana dated January 23, 1995, OSM requested information from Louisiana that would help OSM decide which approach to take in Louisiana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Louisiana program provisions (Administrative Record No. LA-352). By letter dated February 7, 1995, Louisiana responded to OSM's request (Administrative Record No. LA-353).

Louisiana stated that no underground coal mines were operating in Louisiana after October 24, 1992. Louisiana's regulatory program does not allow underground mining at the present time. In the event that Louisiana received an application for underground mining, Louisiana would have to revise its program to incorporate counterpart provisions to section 720(a) of SMCRA and the implementing Federal regulations.

#### *E. Enforcement in Oklahoma*

By letter to Oklahoma dated January 23, 1995, OSM requested information from Oklahoma that would help OSM decide which approach to take in Oklahoma to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or counterpart Oklahoma program provisions (Administrative Record No. OK-965). By letter dated February 8, 1995, Oklahoma responded to OSM's request (Administrative Record No. OK-966).

Oklahoma stated that one underground coal mine was active after October 24, 1992, and one underground mine was constructing surface facilities as of February 8, 1995.

Oklahoma indicated that the State regulation at OAC 460:20-45-47(c) (previously codified as section 817.121(c)) addresses repair or compensation of subsidence-related material damage to structures and replacement of water supplies

contaminated or diminished due to subsidence.

However, Oklahoma indicated that this regulation "is not as clearly written" as the new Federal regulations and that it includes "vague statements \* \* \* regarding structures, facilities, and any drinking, domestic or residential water supplies" that will be clarified once the regulation is revised in accordance with the new Federal regulations.

Oklahoma did not indicate when the State counterpart provisions went into effect. However, Oklahoma stated that it had investigated one citizen complaint alleging subsidence-related damage for underground mining operations conducted after October 24, 1992, and it issued a violation notice as a result of the complaint. OSM has determined that the citizen complaint did not involve structural damage or water supply loss or contamination.

#### *F. Enforcement in Texas*

By letter to Texas dated January 23, 1995, OSM requested information from Texas that would help OSM decide which approach to take in Texas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Texas program provisions (Administrative Record No. TX-587). By letter dated January 26, 1995, Texas responded to OSM's request (Administrative Record No. TX-588).

Texas stated that no underground coal mines were operating in Texas after October 24, 1992.

Texas stated that the Texas Surface Coal Mining and Reclamation Act currently has no counterpart to section 720 of SMCRA, and its regulations at section 817.564, regarding repair and compensation for damages occurring to buildings and other structures, and at section 817.521, regarding replacement of water supplies, have no direct counterparts to OSM's proposed regulations at 30 CFR 817.121(c) and 817.41(k).

## **II. Public Comment Procedures**

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Arkansas, Louisiana, Oklahoma, and Texas to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

#### *A. Written Comments*

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in

support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

### B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

### C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Arkansas, Louisiana, Oklahoma, and Texas should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

**Russell F. Price,**

*Acting Assistant Director, Western Support Center.*

[FR Doc. 95-8469 Filed 4-5-95; 8:45 am]

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### 30 CFR Parts 906, 931, and 944

#### Colorado, New Mexico, and Utah Regulatory Programs

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Announcement of public comment period and opportunity for public hearing.

**SUMMARY:** OSM is requesting public comment that would be considered in deciding how to implement in Colorado, New Mexico, and Utah underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments of SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Colorado, New Mexico, and Utah regulatory programs (herein after referred to as the "State programs" currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Colorado, New Mexico, and Utah and consideration of public comments, OSM will decide whether initial enforcement in each of these States will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions,

should be implemented in Colorado, New Mexico, and Utah. Requests to speak at the hearing must be received by 4:00 p.m., m.d.t. on April 21, 1995.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand-delivered to Thomas E. Ehmet, Acting Director, Albuquerque Field Office at the address listed below.

Copies of the applicable parts of the Colorado, New Mexico, and Utah programs, SMCRA, the implementing Federal regulations, information provided by Colorado, New Mexico, and Utah concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Thomas E. Ehmet, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., Suite 1200, Telephone: (505) 766-1486.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Ehmet, Acting Director, Albuquerque Field Office, Telephone: (505) 766-1486.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with